REIMBURSEMENT AGREEMENT FOR WATER IMPROVEMENTS FUNDED BY GRANT

This Reimbursement Agreement (this "Agreement") is made this ____ day of _____, 2024, by and between Ivins City, a Utah municipality (the "City"), and Enlaw, LLC and BD Resort Center LLC (the "Developers"). The City and the Developers are sometimes collectively referred to herein as the "Parties."

RECITALS:

A. The Developers are the owner of the real property located within the municipal boundaries of the City as depicted in Exhibit "A" and described in Exhibit "B" hereto (the "Property"). The Property is being developed as a project known as "*Black Desert Resort*" (the "Resort").

B. In connection with its approvals of the Resort, the City requires the Developers to design, construct, and install the following improvements: (i) culinary water lines on Weiskopf Way, Black Desert Drive, and Ranch Road (the "Improvements"). The plan for the Improvements are depicted on the Project Map attached hereto as Exhibit "C." The Improvements are already complete and have been accepted by the City, subject to the warranty period required by Ivins City Code.

C. The Developer has sought, and obtained, approval from the State of Utah for reimbursement for up to $1,000,000 in costs incurred to install the Improvements (the "Reimbursement Amount") through a grant (the "Grant") from the Utah Department of Natural Resources, Division of Water Resources (the "Division").

D. The terms of the Grant provide that the Reimbursement Amount will be delivered by the Division to the City after verification of all required documentation per that agreement and that the City will then deliver the Reimbursement Amount to the Developer. A true and correct copy of the Grant Agreement between the Division and the City is attached hereto as Exhibit "D".

AGREEMENT:

NOW, THEREFORE, in consideration of the above Recitals, mutual covenants, and undertakings, the Parties hereby agree as follows:

Section 1. **Improvements.** The Developer represents and warrants to the City that it has completed the Improvements in accordance with the City's requirements, and that, unless already conveyed or dedicated to the City, the Developer shall convey or dedicate the Improvements to the City by executing and delivering to the City a bill of sale warranting title to the Improvements in favor of the City. Other than the warranty contained in Section 3 below, the Developer does not make any other representations or warranties to the City.

Section 2. **Condition of Improvements.** The Developer has caused (or will cause) the Improvements to be completed at the Developer's sole cost and expense by qualified licensed contractors. Prior to City's acceptance of ownership of the Improvements, the Developer shall provide evidence satisfactory to the City that all labor, materials, equipment, rental, and other costs incurred in performing the Improvements have been paid in full and that the City will receive the Improvements free and clear of all liens and encumbrances, and any claims that may ripen into a lien.

Section 3. **Indemnification and Warranty related to the Improvements**. To the fullest extent allowed by law, the Developer shall indemnify, defend, and hold harmless the City, its affiliates, agents, employees, and elected and appointed officials from and against any and all actions, claims, losses, damages, and expenses (including reasonable attorneys' fees) arising out of or connected in any way to the Developer's design, fabrication, construction, installation, and maintenance of the Improvements. If any claim is made against the City that is covered by the preceding indemnification from the Developer, the City shall notify the Developer of the same and the Developer shall have a period of sixty (60) days thereafter to resolve the same. After said 60-day period, if the Developer has not resolved the claim, the City shall have the right, but not the obligation, to assume the entire control of the defense and/or settlement of the claim, through attorneys selected by the City, and the Developer shall cooperate fully with the City in connection with the same. If the City elects to assume control of the defense and/or settlement of the claim, the Developer shall be liable for all City's related costs and expenses, including, without limitation, reasonable attorneys' fees, all judgments or verdicts, and all monies paid in settlement. In addition, the Developer, warrants, and certifies to the City that all work performed and materials used in connection with the Improvements are free and clear of any defects related to the design, construction, and installation of the Improvements. The warranty set forth in this section shall be in effect for one year from the date on which the City accepts conveyance of the Improvements. The Developer shall indemnify and hold the City harmless for breach of any warranties hereunder.

Section 4. **Reimbursement**. The City shall reimburse the Developer by paying the Developer the Reimbursement Amount within thirty (30) days after the City receives the Reimbursement Amount from the Division. The Developer shall provide the City with all necessary documented proof of the actual costs incurred for the Improvements. If the Division fails to deliver the Reimbursement Amount to the City for any reason, the City shall have no obligation to deliver the Reimbursement Amount to the Developer.

Section 5. **Indemnification related to Reimbursement Amount**. To the fullest extent allowed by law, the Developer shall indemnify, defend, and hold harmless the City, its affiliates, agents, employees, and elected and appointed officials from and against any and all actions, claims, losses, damages, and expenses (including reasonable attorneys' fees) arising out of or connected in any way to the Grant and/or the delivery of the Reimbursement Amount to the Developer in perpetuity. If any claim is made against the City that is covered by the preceding indemnification from the Developer, the City shall notify the Developer of the same and the Developer shall have a period of sixty (60) days thereafter to resolve the same. After said 60-day period, if the Developer has not resolved the claim, the City shall have the right, but not the obligation, to assume the entire control of the defense and/or settlement of the claim, through attorneys selected by the City, and the Developer shall cooperate fully with the City in connection with the same. If the City elects to assume control of the defense and/or settlement of the claim,

the Developer shall be liable for all City's related costs and expenses, including, without limitation, reasonable attorneys' fees, all judgments or verdicts, and all monies paid in settlement.

Section 6. **Offset Rights**. The Developer agrees that, in addition to any other rights and remedies available under this Agreement, at law, or in equity, the City may offset against any payments otherwise due and owing to the Developer under Section 4 of this Agreement any amount that the City may be entitled pursuant to indemnification under Sections 3 or 5 of this Agreement or otherwise. Neither the exercise nor the failure to exercise such right of offset will constitute an election of remedies or limit any of the City's indemnifications under Sections 3 or 5 of this Agreement.

Section 7. **Miscellaneous Provisions**.

(a) Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties.

(b) Captions. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope, or interpretation of any of the terms or provisions of this Agreement.

(c) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

(e) Cumulative Remedies. The rights and remedies of the Parties shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy, or priority allowed by law.

(f) Amendment. This Agreement may not be modified except by an instrument in writing signed by the Parties.

(g) Interpretation. This Agreement shall be interpreted, construed, and enforced according to the substantive laws of the State of Utah. This Agreement shall be interpreted in an absolutely neutral fashion, and ambiguities herein shall not be construed against any party as the "drafter" of this Agreement.

(h) Attorneys' Fees. In the event any action or proceeding is taken or brought by either party concerning this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

(i) *Notice*. All notices provided for herein shall be in writing and shall be given by first class mail, certified or registered, postage prepaid, addressed to the parties at their

respective addresses set forth above or at such other address(es) as may be designated by a party from time to time in writing.

Developers
Enlaw, LLC
Attn: Patrick Manning
2600 N Ashton Blvd, Suite 200B
Lehi, Utah 84043

BD Resort Center, LLC
Attn: Patrick Manning
2600 N Ashton Blvd, Suite 200B
Lehi, Utah 84043

Ivins City
Attn: City Manager
85 N. Main St.
Ivins, Utah 84738

(j) Time of Essence. Time is the essence of this Agreement.

(k) Exhibits and Recitals. The recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

(l) Assignability. The Developer may assign this agreement to other affiliated entities that develop the property in its behalf or may sell the project for which case this agreement must run with the sale and be assigned to the new owner.

IN WITNESS WHEREOF, the undersigned have signed this Agreement on the day and year last below written.

IVINS CITY

By_____
City Manager
Dated: _____

ATTEST:

_____
City Recorder

STATE OF UTAH)
)ss:
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____ and _____, as the City Manager and City Recorder, respectively, of IVINS CITY, a Utah municipality.

_____
Notary Public

DEVELOPER:

ENLAW, LLC

By: _____
Name: Patrick Manning

Title: _____

STATE OF UTAH)
)ss:
COUNTY OF_____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by Patrick Manning, as _____of ENLAW, LLC.

_____
Notary Public

BD RESORT CENTER, LLC

By: _____
Name: Patrick Manning

Title: _____

STATE OF UTAH)
)ss:
COUNTY OF_____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by Patrick Manning, as _____of BD RESORT CENTER, LLC.

_____
Notary Public

EXHIBIT A

Project Site Boundary Map

Exhibit "A" Project Site Boundary Map

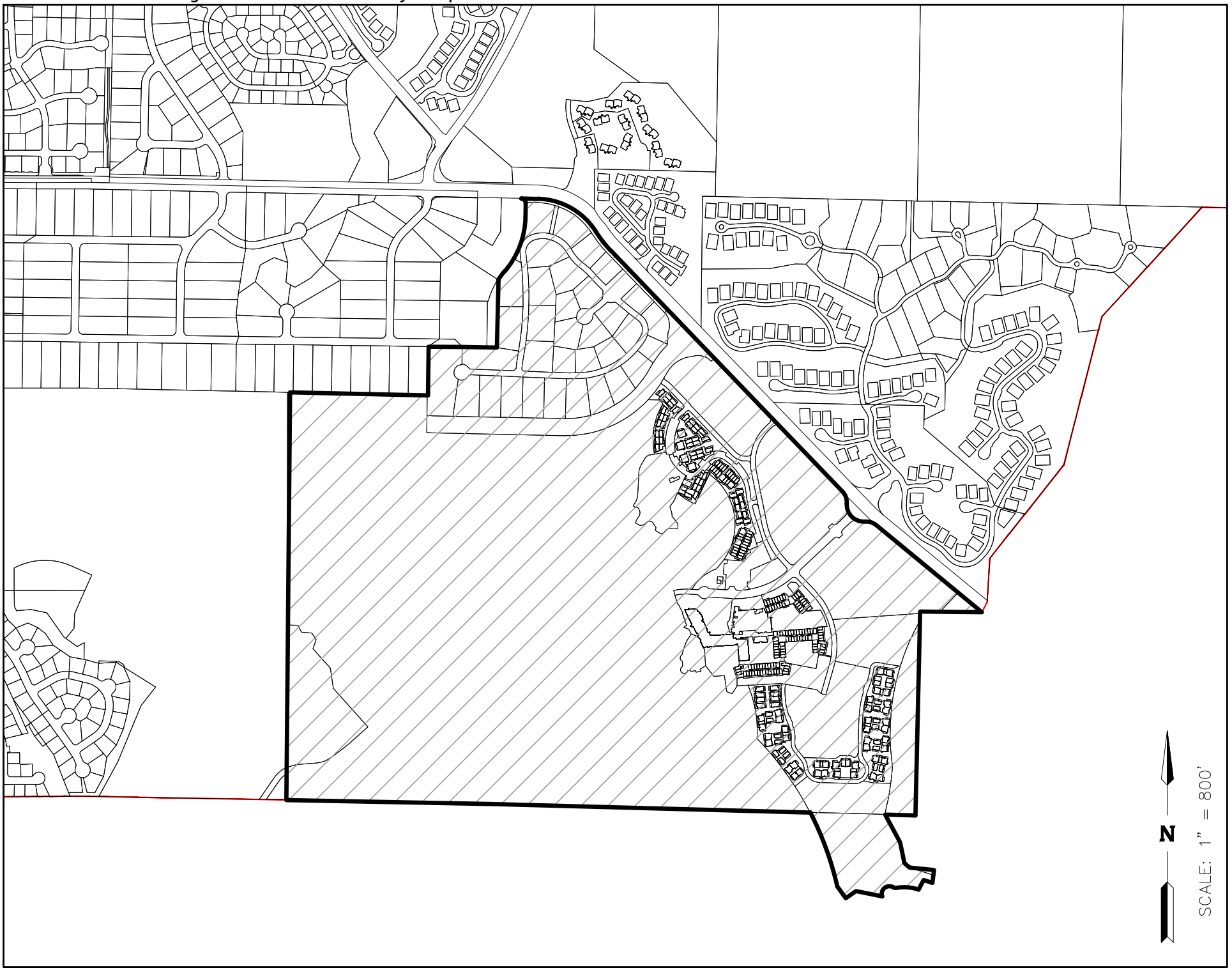


EXHIBIT B

Project Site Legal Description

Exhibit "B" - Project Site Boundary Legal Description

BLACK DESERT RESORT – IVINS AREA

BEGINNING AT THE EAST QUARTER CORNER OF SECTION 4, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 01°17'15" WEST 1329.40 FEET; THENCE NORTH 88°27'56" WEST 197.75 FEET; THENCE SOUTH 28°16'04" EAST 205.98 FEET; THENCE SOUTH 11°24'38" EAST 137.29 FEET; THENCE SOUTH 48°56'39" EAST 44.36 FEET; THENCE SOUTH 84°00'23" EAST 160.74 FEET; THENCE SOUTH 06°37'25" WEST 84.01 FEET; THENCE NORTH 72°07'50" WEST 60.22 FEET; THENCE SOUTH 27°47'18" WEST 71.72 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 300.03 FEET OF WHICH THE RADIUS POINT LIES SOUTH 18°16'44" WEST; THENCE WESTERLY 145.63 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 27°48'41" AND A CHORD BEARING OF NORTH 85°37'36" WEST 144.21 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET OF WHICH THE RADIUS POINT LIES NORTH 09°32'02" WEST; THENCE WESTERLY 18.78 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°02'26" AND A CHORD BEARING OF NORTH 78°00'49" WEST 18.34 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET; THENCE SOUTHWESTERLY 124.23 FEET THROUGH A CENTRAL ANGLE OF 142°21'26"; THENCE NORTH 78°51'01" WEST 174.68 FEET; THENCE SOUTH 55°30'38" WEST 81.08 FEET; THENCE NORTH 36°04'49" WEST 91.49 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 2045.30 FEET OF WHICH THE RADIUS POINT LIES SOUTH 77°11'59" WEST; THENCE NORTHERLY 517.26 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 14°29'25" AND A CHORD BEARING OF NORTH 20°02'44" WEST 515.89 FEET; THENCE NORTH 88°27'56" WEST 2088.63 FEET; THENCE NORTH 88°56'23" WEST 1331.42 FEET; THENCE NORTH 00°31'02" EAST 2658.69 FEET; THENCE SOUTH 88°47'07" EAST 899.98 FEET; THENCE NORTH 00°45'51" EAST 317.43 FEET; THENCE SOUTH 89°24'39" EAST 224.81 FEET; THENCE SOUTH 89°13'56" EAST 220.65 FEET; THENCE NORTH 01°25'00" EAST 442.42 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 495.45 FEET OF WHICH THE RADIUS POINT LIES SOUTH 57°10'18" EAST; THENCE NORTHEASTERLY 67.88 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°51'00" AND A CHORD BEARING OF NORTH 36°45'12" EAST 67.83 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 558.71 FEET OF WHICH THE RADIUS POINT LIES NORTH 49°19'17" WEST; THENCE NORTHERLY 384.15 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 39°23'41" AND A CHORD BEARING OF NORTH 20°58'53" EAST 376.63 FEET; THENCE NORTH 01°17'04" EAST 92.00 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 30.00 FEET; THENCE NORTHWESTERLY 47.11 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°58'32"; THENCE SOUTH 88°43'08" EAST 109.11 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 460.00 FEET OF WHICH THE RADIUS POINT LIES SOUTH 01°17'04" WEST; THENCE SOUTHEASTERLY 452.01 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 56°18'04" AND A CHORD BEARING OF SOUTH 60°33'54" EAST 434.05 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 790.00 FEET; THENCE SOUTHEASTERLY 158.16 FEET THROUGH A CENTRAL ANGLE OF 11°28'16"; THENCE

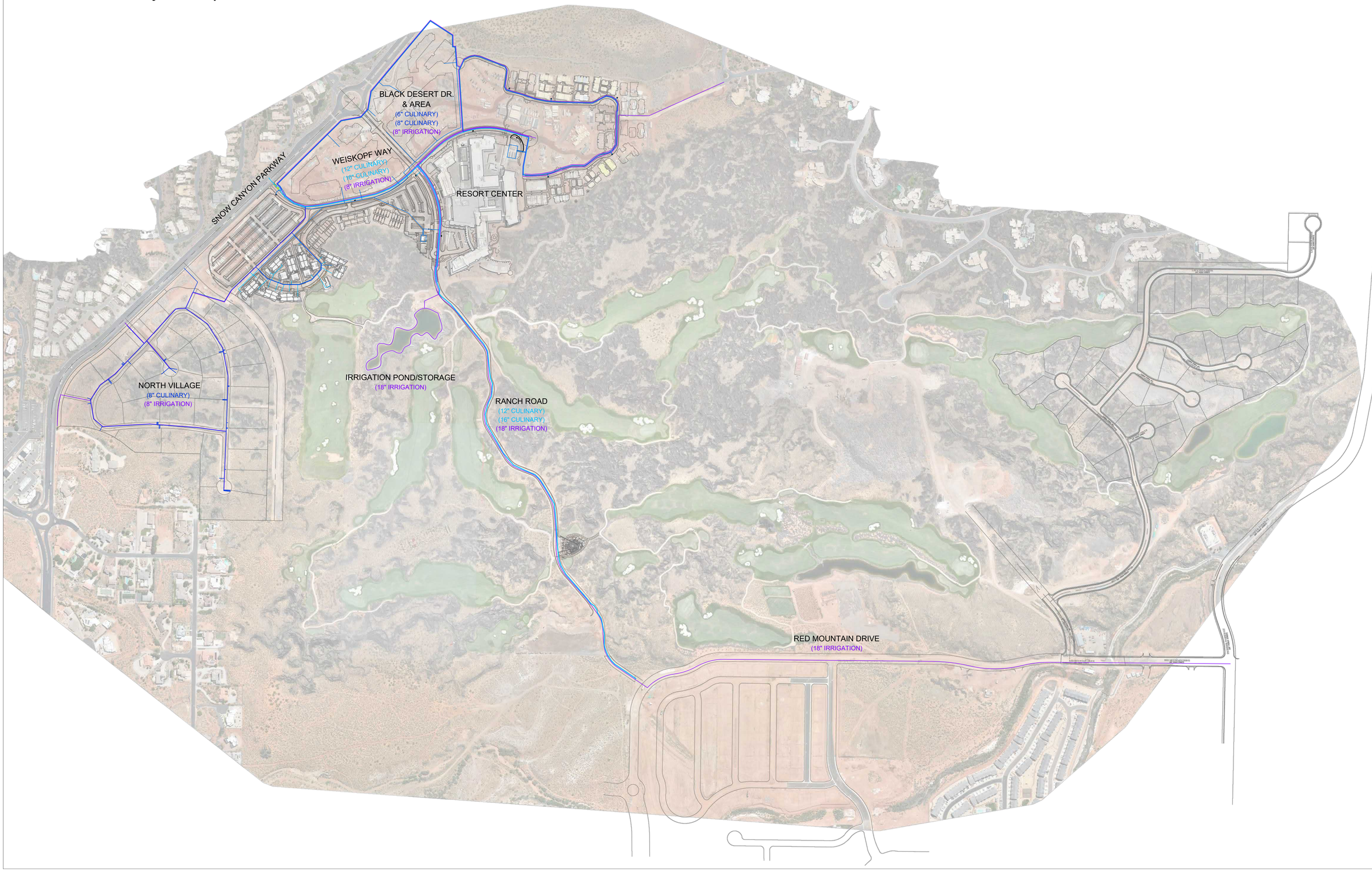
SOUTH 43°53'18" EAST 2181.30 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 99.99 FEET; THENCE SOUTHERLY 84.11 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 48°11'33" TO THE BEGINNING OF A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 110.00 FEET; THENCE SOUTHEASTERLY 191.87 FEET THROUGH A CENTRAL ANGLE OF 99°56'26" TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 93.01 FEET; THENCE EASTERLY 75.65 FEET THROUGH A CENTRAL ANGLE OF 46°35'52"; THENCE SOUTH 50°32'12" EAST 893.44 FEET; THENCE NORTH 89°23'36" WEST 402.82 FEET TO THE POINT OF BEGINNING.

CONTAINS 278.78 ACRES, MORE OR LESS.

EXHIBIT C

Project Infrastructure Map

Exhibit B - Project Map



North

Black Desert Resort - Public Waterline Infrastructure

C1 Public Waterlines Exhibit

Scale: 1"=300' (22x24 Print)

EXHIBIT D

Grant Agreement with the State

Exhibit D - Grant Agreement with State of Utah

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES

Copies:
DWRe
Consult

DIVISION OF WATER RESOURCES

Contract No.

Date _____

Vendor No. 55394C TIN 87-0292376

Vendor IVINS CITY

Address 85 NORTH MAIN STREET

City IVINS State UTAH Zip 84738

c/o Charles Gillette Phone 435-668-9909

Title Public Works Director Email cgillette@ivinsutah.gov

Commodity Code 99999 Payable X Receivable _____

Description: PROVIDE FUNDS TO UPGRADE THE EXISTING WATER METER SYSTEM IN IVINS CITY FROM AN AUTOMATED METER READING SETUP TO AN ADVANCED METERING INFRASTRUCTURE

Payment:		Receive:	
Frequency	As Requested	Frequency	
Amount	Variable	Amount	
Total	**$1,500,000**	Total	
Effective Date		Expiration Date	6/30/2026

Fund	Dept	Unit	Approp Unit	Balance Sheet	Expend/ Revenue	Program	Phase	Activity	Total Amount
1000	560	6204	RPD		7501	RT109			$1,500,000

Approved MK MK SGD SGD TS TS JRW JRW JE JSC CH CAH CONT _____

PATRICK CAMPANA
Monitor

Pat Campana
Signature

Grant Agreement

Grant To
IVINS CITY
From
UTAH DEPARTMENT OF NATURAL RESOURCES,
DIVISION OF WATER RESOURCES

This GRANT AGREEMENT is made and entered into upon the date of the last signature to this document, between the State of Utah, Department of Natural Resources, Division of Water Resources (WRe) and Ivins City (Grant Recipient), for the work described in Item 1 below. Funding for this agreement is provided through the State of Utah 2024 General Legislative Session, House Bill 003, line item 54 for water infrastructure projects.

The terms and conditions of this Grant Agreement are as follows:

1. WRe shall grant to Grant Recipient $1,500,000 (the "Grant") toward water infrastructure that provides economic development and the upgrade of the existing water meter system from Automated Meter Reading to Advanced Metering Infrastructure. WRe shall reimburse Grant Recipient for the actual costs incurred up to this Grant amount.

2. Grant Recipient has provided WRe a detailed budget outlining how the Grant will be used. This budget is attached to this Grant Agreement as Attachment B.

3. Grant Recipient shall document and retain all supporting information associated with the work done under this grant.

4. Grant Recipient shall provide WRe with an annual report in writing by June 30th of each year. The annual report shall describe expenditures covered by the Grant toward the project to that date. The annual report shall also describe annual deliverables and performance metrics that demonstrate sufficient progress toward fulfilling the Grant's purpose, as follows:
    a. **Black Desert Resort Waterline Construction along Weiskopf Way & Black Desert Drive:**
        i. Performance Metric: % Completion of Waterline Construction
        ii. Deliverable: Constructed Waterline
    b. **Purchase of Advanced Metering Infrastructure:**
        i. Performance Metric: N/A
        ii. Deliverable: Purchased Advanced Metering Infrastructure

5. No later than **June 30, 2026**, Grant Recipient shall provide WRe with a final report. The final report shall detail the extent to which Grant Recipient fulfilled the Grant's purpose, including total expenditures, deliverables, and performance metrics described in paragraph 4.

6. Unless otherwise stated in this Agreement, WRe agrees to reimburse Grant Recipient 100% of costs incurred toward completion of the purpose of the Grant up to the Grant amount upon submission and approval of a detailed invoice and proof of payment. The final disbursement will be paid upon receipt of a final report as outlined in Paragraph 5, accompanied by a detailed invoice and proof of payment.

7. All expenditures associated with this project for which Grant Recipient receives reimbursement from any other participating entity are not reimbursable by WRe. Grant Recipient shall report such expenditures reimbursed by other entities in the annual and final reports described in paragraphs 4 and 5.

8. All funds are subject to legislative appropriation. Ongoing appropriations are still subject to legislative changes on a year-to-year basis.

9. Grant Recipient acknowledges and agrees that the State of Utah may audit the records that pertain to the performance of this grant. If State audit findings determine that any funds expended by Grant Recipient violate the terms of this Grant Agreement, Grant Recipient shall provide funds to the State sufficient to meet such repayment request(s). If the Grant Recipient is unwilling or unable to repay the funds, the repayment request amount will become a past due obligation of the Grant Recipient to the State and may be collected as such.

10. Grant Recipient agrees to follow purchasing practices that ensure procurement is conducted in such a way that promotes fair and competitive prices.

11. Grant Recipient agrees to declare any known or potential conflicts of interest with their suppliers or others that may influence their decision making.

12. Grant Recipient agrees to comply with the standard terms and conditions attached to this Grant Agreement as Attachment A.

13. This agreement has an expiration date of **June 30, 2026**.

SIGNATURES TO FOLLOW

Chris Hart/Mayor	Date
Charles Gillette/Public Works Director	Date
Division of Water Resources/Director	11/11/2024 Date
Division of Water Resources/Financial Manager	11/07/2024 Date
State of Utah/Division of Finance	Date

ATTACHMENT A: STATE OF UTAH AGENCY STANDARD TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES

These terms and conditions may only be used when both parties are government entities or political subdivisions as defined in the Utah Government Immunity Act.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
   a) "**Confidential Information**" means information that is deemed as confidential under applicable state and federal laws, and personal data as defined in Utah Code 63A-19-101. The State Entity reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
   b) "**Contract**" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
   c) "**Contract Signature Page(s)**" means the State of Utah cover page(s) that the State Entity and Contractor signed.
   d) "**Contractor**" means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
   e) .
   f) "**Goods**" means all types of tangible personal property, including but not limited to materials, supplies, Custom Deliverable, and equipment that Contractor is required to deliver to the State Entity under this Contract.
   g) **"Procurement Item"** means Goods, a supply, Services, Custom Deliverable, construction, or technology that Contractor is required to deliver to the State Entity under this Contract.
   h) **"Response"** means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the State Entity's Solicitation.
   i) "**Services**" means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code
   j) "**Solicitation**" means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
   k) "**State Entity**" means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
   l) "**State of Utah**" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
   m) "**Subcontractors**" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the State Entity to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal auditors, State Entity staff, or their designees, access to all such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.
5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** INTENTIONALLY DELETED
7. **CONFLICT OF INTEREST:** INTENTIONALLY DELETED
8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State Entity or the State of Utah.
9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the State Entity under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the State Entity and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or

Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of the State Entity. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.

11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.

12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.

13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.

14. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the State Entity, upon thirty (30) days written termination notice being given to the Contractor. The State Entity and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

    On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the State Entity be liable to the Contractor for compensation for any Good neither requested nor accepted by the State Entity. In no event shall the State Entity's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State Entity for any damages or claims arising under this Contract.

15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the State Entity, if the State Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the State Entity's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

    If a written notice is delivered under this section, the State Entity will reimburse Contractor for the Procurement Item(s) properly ordered and/or services properly performed until the effective date of said notice. The State Entity will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from the State Entity's funds and used in the exercise of the State Entity's essential functions as a State of Utah entity. Upon request, the State Entity will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the State Entity's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

17. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to the State Entity under this Contract. Contractor warrants for a period of one (1) year that: (i) the Procurement Item(s) perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Item(s) are suitable for the ordinary purposes for which such Procurement Item(s) are used; (iii) the Procurement Item(s) are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Item(s) are designed and manufactured in a commercially reasonable manner; (v) the Procurement Item(s) are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Item(s) are free of defects. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest model or design.

    Remedies available to the State Entity under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the State Entity within ten (10) days of any written notification informing Contractor of the Procurement Item(s) not performing as required under this Contract. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State Entity may otherwise have under this Contract.

18. **CONTRACTOR'S INSURANCE RESPONSIBILITY:** INTENTIONALLY DELETED
19. **RESERVED.**

20. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the State Entity and the State of Utah

express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the State of Utah Division of Purchasing and General Services, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

21. **DELIVERY:** All deliveries under this Contract will be F.O.B. Destination Freight Prepaid and Allowed, unless specifically negotiated otherwise and explicitly written in this contract, with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State Entity, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.

22. **ACCEPTANCE AND REJECTION:** The State Entity shall have thirty (30) days after delivery of the Procurement Item(s) to perform an inspection of the Procurement Item(s) to determine whether the Procurement Item(s) conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Procurement Item(s) by the State Entity.

    If Contractor delivers nonconforming Procurement Item(s), the State Entity may, at its option and at Contractor's expense: (i) return the Procurement Item(s) for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Item(s); or (iii) obtain replacement Procurement Item(s) from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Item(s) without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the State Entity to redeliver the corrected Procurement Item(s). Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.

23. **INVOICING:** Contractor will submit invoices within thirty (30) days of the delivery date of the Procurement Item(s) to the State Entity. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the State Entity will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Response or on its invoice. The State Entity has the right to adjust or return any invoice reflecting incorrect pricing.

24. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the State Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the State Entity within ten (10) business days of receipt of final payment, shall release the State Entity and the State of Utah from all claims and all liability to the Contractor. The State Entity's payment for the Procurement Item(s) and/or services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the State Entity or the State of Utah may have against Contractor. The State of Utah and the State Entity will not allow the Contractor to charge end users electronic payment fees of any kind.

25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the State Entity and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State Entity or the State of Utah for infringement of a third-party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.

26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The State Entity and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Procurement Item(s), documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the State Entity.

27. **OWNERSHIP IN CUSTOM DELIVERABLES:** INTENTIONALLY DELETED

28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the State Entity.

29. **REMEDIES:** Any of the following events will constitute cause for the State Entity to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The State Entity may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the State Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the State Entity or the State of Utah; or (v) demand a full refund of any payment that the State Entity has made to Contractor under this Contract for Procurement Item(s) that do not conform to this Contract.

30. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The State Entity may terminate this Contract after determining such delay will prevent successful performance of this Contract.

31. **CONFIDENTIALITY:** If Contractor has access to or processes Confidential Information, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) comply with any requirements contained in the contract regarding permitted uses and disclosures of personal data, measures designed to safeguard personal data, and the destruction of personal data. Contractor will promptly notify the State Entity of any potential or actual misuse or misappropriation of Confidential Information, including

any data breaches, in accordance with UCA 63A-19 Government Data Privacy Act. In Accordance with UCA 63A-19, Contractor must comply with all the same requirements regarding personal data as the State. .

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the State Entity and the State of Utah, including anyone for whom the State Entity or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the State Entity or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

32. **PUBLICITY:** Contractor shall submit to the State Entity for written approval all advertising and publicity matters relating to this Contract. It is within the State Entity's sole discretion whether to provide approval, which approval must be in writing.

33. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES**: Contractor shall ensure that personnel working on State of Utah premises shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The State of Utah or Eligible User may remove any individual for a violation hereunder.

34. **CONTRACT INFORMATION:** INTENTIONALLY DELETED

35. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.

36. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State Entity to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the State Entity.

37. **CHANGES IN SCOPE**: Any changes in the scope of the Procurement Item(s) to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of the Procurement Item(s).

38. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any, Procurement Item(s), supplies, , construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such Procurement Item(s), supplies, , construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.

39. **ATTORNEY'S FEES:** INTENTIONALLY DELETED

40. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation, then all travel costs associated with the delivery of Procurement Item(s) under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to Contractor for correction.

41. **DISPUTE RESOLUTION:** INTENTIONALLY DELETED

42 **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the State Entity or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.

43. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the State Entity's right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.

44. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.

45. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the State of any errors and/or omissions that are discovered.

46. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

47. **ANTI-BOYCOTT ACTIONS**: In accordance with Utah Code 63G-27 et seq., Contractor certifies that it is not currently engaged in any "economic boycott" nor a "boycott of the State of Israel" as those terms are defined in Section 63G-27-102. Contractor further certifies that it has read and understands 63G-27 et. seq., that it will not engage in any such boycott action during the term of this Contract, and that if it does, it shall promptly notify the State in writing.

48. **TIME IS OF THE ESSENCE:** The Procurement Item(s) shall be completed by any applicable deadline stated in this Contract. For all Procurement Item(s), time is of the essence. Contractor shall be liable for all reasonable damages to the State Entity, the State of Utah, and anyone for whom the State of Utah may be liable as a result of Contractor's failure to timely perform the Procurement Item(s) required under this Contract.

49. **PERFORMANCE EVALUATION:** The State Entity may conduct a performance evaluation of Contractor's Procurement

Item(s), including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.

50. **STANDARD OF CARE:** The Procurement Item(s) of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having regular experience providing similar Procurement Item(s) which similarities include the type, magnitude, and complexity of the Procurement Item(s) that are the subject of this Contract. Contractor shall be liable to the State Entity and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third-party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.

51. **REVIEWS:** The State Entity reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Procurement Item(s) of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.

52. **Restricted Foreign Entities and Forced Labor:** In accordance with Utah law, Contractors contracting with the State certify that they are not providing a "forced labor product" as defined in Utah Code 63G-6a-121. If the Contractor is providing technology or technology services, networks, or systems, the Contractor certifies that the aforementioned does not come from a "restricted foreign entity," as also defined in UCA 63G-6a-121.

(Revision Date: 9/16/2024)

Attachment B

Ivins City:
AMI System Upgrade and Public Water Infrastructure Enhancement Project

Project Budget and Schedule

Items	Description	Projected Cost	Actual Cost	Projected Date of Completion	Date of Completion
Advanced Metering Infrastructure Implementation Cost Break Down					
Purchase Equipment	Purchase cellular endpoints, LCD registers, nicor polymer lids	$500,000.00		7/1/2025	
Public Water Infrastructure Enhancement Cost Break Down					
Weiskopf Way & Black Desert Drive Waterline Construction	Waterline that was constructed as part of Black Desert Resort Project	$1,000,000.00		9/30/2024	9/30/2024
	Project Total	**$1,500,000.00**	$0.00		
	Grant Amount	$1,500,000.00			
	Unallocated Grant Funds	$0.00	$1,500,000.00		